IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6113 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALJIBHAI HIRABHAI PANJARI

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner No. 1

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/08/2004

ORAL JUDGEMENT

The petitioner was given fire arm licence, being Licence No.DM-JND-III-904-1993. The said fire arm licence was issued by the District Magistrate, Junagadh, in the year 1993 and it was renewed from time to time.

However, the District Magistrate, subsequently refused to renew the said licence on the ground that the petitioner had purchased the said licence from one Shri Jagot, who was alleged to be the authorized government dealer. The said person was subjected to criminal case and during the investigation of the said case, the licence of the petitioner was also recovered as a Muddammal.

Against the order of the District Magistrate, in not renewing the said licence, the petitioner had initially preferred an appeal before the State Government. The State Government, initially, by its order dated 21st June, 2000, partly allowed the said appeal and the matter was remanded to the District Magistrate, Porbandar for the purpose of passing fresh order after hearing the petitioner.

The District Magistrate, again, by his order dated 11th November, 2003, rejected the claim of the petitioner for renewal of the said licence on the ground that the petitioner has not produced appropriate material before the Authority regarding disposal of the criminal case. The said order was again challenged by the petitioner by way of appeal before the State Government, being Appeal No.574 of 2003. The State Government rejected the said appeal on the ground that the same is barred by limitation.

The learned Advocate for the petitioner has submitted that the petitioner has already paid necessary fee for preferring the appeal and appropriate challan will be shown in case the Government is directed to re-hear the said appeal, on merits. In Ground 6.D) of the petition, the petitioner has stated that the petitioner is a semi-literate person and was not aware about the prescribed period of limitation. After receiving the order from the District Magistrate, the petitioner tried to contact his Advocate, as the petitioner was under the impression that the petitioner can file a writ petition in the High Court, without exhausting the appellate remedy. At that stage, the petitioner was advised by the Advocate concerned that he is required to file an appeal, instead of filing a writ petition in the High Court. In my view, at least this part of the delay was required to be explained by the petitioner before the State Government for the purpose of condoning the delay. However, considering the fact that the averments made in the petition are not controverted by the State Government, by filing affidavit nor any file is produced for the perusal of the Court, in my view, instead of rejecting the appeal of the petitioner on the

ground of limitation, it would be just and proper to direct the State Government to rehear the appeal of the petitioner on merits and decide the same in accordance with law. Under the circumstances, the petition is required to be allowed.

The order of the Deputy Secretary, Home Department, by which the appeal of the petitioner is rejected, is quashed and set aside. The State Government is directed to re-hear the appeal of the petitioner in accordance with law and on the basis of the evidence available on the record. It is clarified that, on the merits of the issue involved in this matter, this Court has not expressed any opinion and it is for the Government to decide the same in accordance with law and as per the evidence on record. The effect of this order is that the delay in filing the appeal before the Deputy Secretary, Home Department, is condoned and the said appeal will be decided on its own merits.

The petition is accordingly allowed partly. Rule is made absolute accordingly.

Writ to be sent to the State Government forthwith.

12th August, 2004 (P.B. Majmudar, J.)

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(apj)